

Appl. No.: 09/922,996
Applicant: DOUK, *et al.*
Atty. Docket: P563 CIP 2

Remarks

Status of the Claims

Claims 1-38 are pending in the present application. Applicants acknowledge the final election/restriction requirement in the Office Action dated December 29, 2003. Claims 7, 14-18, 23, 28-30 and 37-38 have been withdrawn as being directed to a non-elected species. Applicants reserve the right under 37 C.F.R. § 1.144 to later petition from the requirement for restriction.

Claim 25 has been amended in response to an indefiniteness rejection by the Examiner. No new matter has been added by this amendment and entry of the amendment is respectfully requested. Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider and withdraw the outstanding rejections.

Claim Rejections under 35 U.S.C. § 112

Claim 25 stands rejected under 35 U.S.C. § 112 as being indefinite. Claim 25 has been amended in response to this rejection. Therefore, Applicants respectfully request that this rejection be withdrawn.

Claim Rejections under 35 U.S.C. § 102(b)

Claims 1-6, 8-13, 19-22, 24-27 and 31-36 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Daniel *et al.* (6,001,118), hereinafter "Daniel." The Examiner contends that all the limitations of claim 1 are disclosed in Daniel at col.1, lines 18-67; col. 2, lines 1-43; and in Figs. 19, 20 A-B. Specifically, "Item 288 is considered a latch that uses to get a hold of the guide-wire." Applicants aver that Daniel fails to teach each and every element recited in claim 1. In particular, Daniel discloses no element corresponding to a latch, as required by claim 1, in part:

. . . at least one latch fixed to the guidewire distal region in a location such that the latch is operable to releasably engage with the proximal end of the capture element to temporarily

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retain the capture element in the deployed configuration.

Daniel's "item 288," relied upon by the examiner, is described variously as a movable plunger, a movable collar, or a slidable collar (see col. 11, line 51 - col. 12, line 33). Collar 288 is not fixed to any element that corresponds to a guidewire, as required in Applicants' claim 1. Rather, collar 288 slides within tube 286, and slides over core wire 284 (*ibid.*). Collar 288 is also is not operable to releasably engage with the proximal end of a capture element, as is also required in pending claim 1. Instead, collar 288 is fixedly coupled to proximal end 302 of expandable member 290 such that sliding movement of collar 288 towards distal fixed collar 292 along core wire 284 causes expandable member 290 to deploy (*ibid.*). Therefore, in view of the above arguments, Daniel fails to teach each and every element recited in claim 1.

Claim 2 is rejected in view of Daniel's capture element 290 being attached to a guidewire. Claim 2 depends from claim 1 and is patentable for at least the reasons discussed above regarding claim 1.

Claim 3 is apparently rejected by considering collar 288 to teach a stop element required, in part, by the claim. Applicants aver that Daniel fails to teach the each and every element recited in claim 3:

Claim 3: The device of claim 1 wherein the capture element is removably slidable along the guidewire, the capture element having been selectively placed about the guidewire and pushed onto the guidewire distal region, the device further comprising a stop element disposed on the guidewire distal region, the stop element being capable of blocking advancement distal thereto by the distal end of the capture element.

Daniel does not teach a capture element that is removably slidable along a guidewire, as required, in part, by pending claim 3. Rather, the distal end of Daniel's expandable member 290 is longitudinally fixed to core wire 284 through fixed collar 292 (*ibid.*). Daniel's collar 288 also does not teach the function required of the stop element in

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pending claim 3. As described above, collar 288 slides over core wire 284 and is fixedly coupled to proximal end 302 of expandable member 290. Therefore, collar 288 is not capable of blocking advancement distal thereto by the distal end of the capture element. Additionally, Claim 3 depends from claim 1 and is patentable for at least the reasons discussed above regarding claim 1.

Regarding claim 4, the Examiner argues that FIG. 19 teaches at least one latch positioned between the distal ends of the capture element. However, the Examiner fails to identify which element in FIG. 19 is supposed to teach the latch required in pending claim 4. In FIG. 19, bias spring 294 is the only element disposed between the distal and proximal ends of expandable member 290, and spring 294 has no structural or functional correlation to the claimed latch. Additionally, Claim 4 depends from claim 1 and is patentable for at least the reasons discussed above regarding claim 1.

Daniel's element 292 is considered to teach the first anti-inversion stop required, in part, by claim 5. A first anti-inversion stop is defined by Applicants in paragraph [0040]:

. . . first anti-inversion stop 75 limits the distal advancement of capture element proximal end 31. . . If capture element ends 31, 33 are pushed too close together, then capture element 30 can invert into a cup shape, which may prevent self-closure of capture element 30 and the expeditious withdrawal of device 20. First stop 75 is preferably a polyimide tube or ring that is fixed about guidewire 25 at a location between capture element ends 31, 33.

As described above, the distal end of Daniel's expandable member 290 is longitudinally fixed to core wire 284 through fixed collar 292. Therefore, collar 292 cannot be the first anti-inversion stop, as the term is defined by Applicants. Additionally, Claim 5 depends from claim 1 and is patentable for at least the reasons discussed above regarding claim 1.

Regarding claims 6, 8 and 9, the Examiner contends that Daniel discloses

. . . the device further comprises a hollow deployment rod

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(282) disposed about the guide-wire. The deployment rod pushes the capture element along the guide-wire and over the at-least one latch (288) that transforms the capture element from the closed configuration to the deployed configuration. The deployment rod comprises a catheter (figs 19, 20 a-b).

Applicants respectfully disagree with the Examiner's characterization of the teachings of Daniel with respect to element 282. Daniel's outer tube 282 is not slidably disposed about core wire 284, so outer tube 282 cannot push expandable member 290 along core wire 284. Instead, core wire proximal end 300 is coupled to transition tube 286, which is coupled to outer tube 282. None of the three elements core wire 284, outer tube 282, and transition tube 286 is moveable with respect to another of the three elements (*ibid.*).

To transform Daniel's expandable member 290 from the closed configuration to the deployed configuration, pressurized fluid is delivered through lumen 296 in outer tube 282. The pressurized fluid enters transition tube 286 and travels about the periphery of inner core wire 284, thus forcing movable plunger/collar 288 to move distally along core wire 284 toward collar 292. Thus, the movement of the proximal end of Daniel's expandable member 290 is accomplished by hydraulic pressure acting on plunger 288. Daniel's embodiments shown in Figs. 19, 20 A-B have no mechanical actuation, such as a rod abutting and pushing on the proximal end of an expandable member. Therefore, Daniel fails to teach each and every element recited in claim 6. Additionally, Claim 6 depends from claim 1 and is patentable for at least the reasons discussed above regarding claim 1.

Claim 8 depends from claim 6, which depends from claim 1. Therefore, claim 8 is patentable for at least the reasons discussed above regarding claims 1 and 6.

Regarding claim 9, the Examiner contends that Figs. 19, 20 A-B teach a deployment rod comprising a catheter. Applicants respectfully disagree with the Examiner's characterization of the teachings of Daniel regarding Figs. 19, 20 A-B. Of the various distal protection devices shown in Daniel, Figs. 19, 20 A-B do not illustrate a

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catheter, or an interventional catheter, slidably disposed about the protection device. Claim 9 also depends from claim 6, which depends from claim 1. Therefore, claim 9 is patentable for at least the reasons discussed above regarding claims 1, 6 and 8.

Claims 10-13, 19-22 and 24-25 depend from claim 1 and are patentable for the reasons discussed above regarding claim 1. Regarding claims 26 and 27, the Examiner states that Daniel "further has at least one latch (fig. 19) that is suitable for engagement with the capture element and is fixed to the guide-wire (284)." Applicants traverse this rejection. As an initial matter, the Examiner fails to identify which element in FIG. 19 is supposed to teach the latch required in pending claims 26 and 27. As discussed above with respect to pending claim 1, collar 288 is not fixed to any element that corresponds to a guidewire. Rather, collar 288 slides over core wire 284 (*ibid.*). Therefore, collar 288 cannot correspond to the latch required in pending claims 26 and 27. Additionally, Claims 26-27 depend from claim 1 and are patentable for at least the reasons discussed above regarding claim 1.

Claim 31 stands rejected for the same reasons as claims 10-13. Claim 31 requires the at least one latch to comprise a tubular braid of filaments. It is improper to reject claim 31 in view of a teaching regarding a capture element comprising a tubular braid of filaments. Additionally, claim 31 depends from claim 26, which depends from claim 1. Thus, claim 31 is patentable for at least the reasons discussed above regarding claims 1 and 26.

Claims 32 and 33 stand rejected for the same reasons as claims 24-27. However, the Examiner fails to identify which element in FIG. 19 is supposed to teach the claim limitations regarding a latch in pending claims 32 and 33. Applicants aver that Daniel fails to teach a latch as required in claims 32 and 33. Additionally, claims 32 and 33 depend from claim 26, which depends from claim 1. Thus, claims 32 and 33 are patentable for at least the reasons discussed above regarding claims 1 and 26.

Claims 34-36 stand rejected for the same reasons as claims 6-9, specifically regarding a deployment rod. The Examiner fails to point out the supposed teachings of Daniel with respect to a closing rod, as required in claims 34-36. Applicants aver that

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Daniel fails to teach a closing rod. Additionally, claims 34-36 depend from claim 26, which depends from claim 1. Thus, claims 34-36 are patentable for at least the reasons discussed above regarding claims 1 and 26.

In view of the above amendments and remarks, Applicants respectfully request that the Examiner reconsider the outstanding rejections and that they be withdrawn.

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Conclusion

Applicants believe that a full and complete response has been made to the outstanding Office Action and, as such, the present Application is in condition for allowance. Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,



Dated this 29th day of March 2004.

James F. Crittenden
Agent for Applicant
Registration No. 39,560

Medtronic Vascular, Inc.
37A Cherry Hill Drive
Danvers, MA 01923
Tel. No.: 978.739.3075
Fax No.: 978.739.3055